

## TOBACCO PRODUCTS TAX ACT (EXCERPT)

Act 327 of 1993

### **205.429 Seizure and confiscation of contraband; investigation or search of vehicle; inventory statement of seized property; notice; publication; hearing; disposition of forfeited property; appeal; public sale; proceeds credited to general fund; other penalties not relieved; award and payment to person furnishing information; prohibited conduct by retailer; order.**

Sec. 9. (1) A tobacco product held, owned, possessed, transported, or in control of a person in violation of this act, and a vending machine, vehicle, and other tangible personal property containing a tobacco product in violation of this act and any related books and records are contraband and may be seized and confiscated by the department as provided in this section.

(2) If an authorized inspector of the department or a police officer has reasonable cause to believe and does believe that a tobacco product is being acquired, possessed, transported, kept, sold, or offered for sale in violation of this act for which the penalty is a felony, the inspector or police officer may investigate or search the vehicle of transportation in which the tobacco product is believed to be located. If a tobacco product is found in a vehicle searched under this subsection or in a place of business inspected under this act, the tobacco product, vending machine, vehicle, other than a vehicle owned or operated by a transportation company otherwise transporting tobacco products in compliance with this act, or other tangible personal property containing those tobacco products and any books and records in possession of the person in control or possession of the tobacco product may be seized by the inspector or police officer and are subject to forfeiture as contraband as provided in this section.

(3) As soon as possible, but not more than 5 business days after seizure of any alleged contraband, the person making the seizure shall deliver personally or by registered mail to the last known address of the person from whom the seizure was made, if known, an inventory statement of the property seized. A copy of the inventory statement shall also be filed with the state treasurer. The inventory statement shall also contain a notice to the effect that unless demand for hearing as provided in this section is made within 10 business days, the designated property is forfeited to the state. If the person from whom the seizure was made is not known, the person making the seizure shall cause a copy of the inventory statement, together with the notice provided for in this subsection, to be published at least 3 times in a newspaper of general circulation in the county where the seizure was made. Within 10 business days after the date of service of the inventory statement, or in the case of publication, within 10 business days after the date of last publication, the person from whom the property was seized or any person claiming an interest in the property may by registered mail, facsimile transmission, or personal service file with the state treasurer a demand for a hearing before the state treasurer or a person designated by the state treasurer for a determination as to whether the property was lawfully subject to seizure and forfeiture. The person shall verify a request for hearing filed by facsimile transmission by also providing a copy of the original request for hearing by registered mail or personal service. The person or persons are entitled to appear before the department, to be represented by counsel, and to present testimony and argument. Upon receipt of a request for hearing, the department shall hold the hearing within 15 business days. The hearing is not a contested case proceeding and is not subject to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. After the hearing, the department shall render its decision in writing within 10 business days of the hearing and, by order, shall either declare the seized property subject to seizure and forfeiture, or declare the property returnable in whole or in part to the person entitled to possession. If, within 10 business days after the date of service of the inventory statement, the person from whom the property was seized or any person claiming an interest in the property does not file with the state treasurer a demand for a hearing before the department, the property seized shall be considered forfeited to the state by operation of law and may be disposed of by the department as provided in this section. If, after a hearing before the state treasurer or person designated by the state treasurer, the department determines that the property is lawfully subject to seizure and forfeiture and the person from whom the property was seized or any persons claiming an interest in the property do not take an appeal to the circuit court of the county in which the seizure was made within the time prescribed in this section, the property seized shall be considered forfeited to the state by operation of law and may be disposed of by the department as provided in this section.

(4) If a person is aggrieved by the decision of the department, that person may appeal to the circuit court of the county where the seizure was made to obtain a judicial determination of the lawfulness of the seizure and forfeiture. The action shall be commenced within 20 days after notice of the department's determination is sent to the person or persons claiming an interest in the seized property. The court shall hear the action and determine the issues of fact and law involved in accordance with rules of practice and procedure as in other in rem proceedings. If a judicial determination of the lawfulness of the seizure and forfeiture cannot be made

before deterioration of any of the property seized, the court shall order the destruction or sale of the property with public notice as determined by the court and require the proceeds to be deposited with the court until the lawfulness of the seizure and forfeiture is finally adjudicated.

(5) The department shall destroy all cigarettes forfeited to this state. The department may sell all tobacco products, except cigarettes, and other property forfeited pursuant to this section at public sale. Public notice of the sale shall be given at least 5 days before the day of sale. The department may pay an amount not to exceed 25% of the proceeds of the sale to the local governmental unit whose law enforcement agency performed the seizure. The balance of the proceeds derived from the sale by the department shall be credited to the general fund of the state.

(6) The seizure and destruction or sale of a tobacco product or other property under this section does not relieve a person from a fine, imprisonment, or other penalty for violation of this act.

(7) A person who is not an employee or officer of this state or a political subdivision of this state who furnishes to the department or to any law enforcement agency original information concerning a violation of this act, which information results in the collection and recovery of any tax or penalty or leads to the forfeiture of any cigarettes, or other property, may be awarded and paid by the state treasurer, compensation of not more than 10% of the net amount received from the sale of any forfeited cigarettes or other property, but not to exceed \$5,000.00 which shall be paid out of the receipts from the sale of the property. If any amount is issued to the local governmental unit under subsection (5), the amount awarded under this subsection to a person who provides original information that results in a seizure of cigarettes or other property by a local law enforcement agency shall be paid from that amount issued under subsection (5). If in the opinion of the attorney general and the director of the department of state police it is deemed necessary to preserve the identity of the person furnishing the information, the attorney general and the director of the department of state police shall file with the state treasurer an affidavit setting forth that necessity and a warrant may be issued jointly to the attorney general and the director of the department of state police. Upon payment to the person furnishing that information, the attorney general and the director of the department of state police shall file with the state treasurer an affidavit that the money has been by them paid to the person entitled to the money under this section.

(8) Beginning September 1, 1998, if a retailer possesses or sells cigarettes on which the tax imposed under this act has not been paid or accrued to a wholesaler, secondary wholesaler, or unclassified acquirer licensed under this act, the retailer shall be prohibited from purchasing, possessing, or selling any cigarettes or other tobacco products as follows:

(a) For a first violation, for a period of not more than 6 months.

(b) For a second violation within a period of 5 years, for a period of at least 6 months and not more than 36 months.

(c) For a third or subsequent violation within a period of 5 years, for a period of at least 1 year and not more than 5 years.

(9) The prohibition described in subsection (8) shall be effective upon service by certified mail or personal service on the retailer of notice issued by the department ordering the retailer to cease all sales and purchases of cigarettes and other tobacco products. Upon receipt of this notice, the retailer may return any tobacco products in the possession of the retailer upon which the tax imposed by this act has been paid or accrued to a wholesaler, secondary wholesaler, or unclassified acquirer licensed under this act. The department shall notify all licensed wholesalers, manufacturers, secondary wholesalers, vending machine operators, and unclassified acquirers of any retailer who has been prohibited from purchasing cigarettes or other tobacco products and the duration of the prohibition. A wholesaler, secondary wholesaler, or unclassified acquirer shall not sell cigarettes or other tobacco products to a retailer after receipt of notice from the department that the retailer is prohibited from purchasing tobacco products. Any cigarettes or other tobacco products found on the premises of the retailer during the period of prohibition shall be considered contraband and subject to seizure under this section, and shall constitute an additional improper possession under this subsection. The retailer may contest the order prohibiting purchase, possession, or sale of tobacco products in accordance with the appeal procedures and time limits provided in subsection (3) of this section. After completion of the appeals provided or upon expiration of the period to request such appeal, the department shall issue a final order and make service upon the retailer of an order to cease all purchases, possession, and sale of all cigarettes and other tobacco products for a specified period as appropriate. This order does not relieve the retailer from seizure and sale of a tobacco product or other property under this section, or relieve the retailer from a fine, imprisonment, or other penalty for violation of this act.

**History:** 1993, Act 327, Eff. Mar. 15, 1994;—Am. 1995, Act 118, Imd. Eff. June 29, 1995;—Am. 1997, Act 187, Imd. Eff. Dec. 30, 1997;—Am. 2004, Act 474, Imd. Eff. Dec. 28, 2004.